IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of decision : December 12, 2006

1. Criminal Appeal No. 578-DB of 1997

Gurnam Kaur versus State of Haryana

2. Criminal Appeal No. 684-DB of 1997

Bukan Singh alias Jaswant Singh versus State of Haryana.

Coram: Hon'ble Mr. Justice Virender Singh
Hon'ble Mr. Justice A.N. Jindal

Present : Mr. T.S.Sangha, Advocate for the appellants.
Mr. Dinesh Arora, Assistant Advocate General, Haryana.

Virender Singh, J.

Vide this judgment we are disposing of the aforesaid two appeals in which both the appellants (hereinafter to be referred to as 'accused') stand convicted under section 302 read with section 34 IPC vide impugned judgment of learned Sessions Judge, Sirsa dated 7.8.1997 for allegedly committing the murder of Sukhdev Singh husband of Gurnam Kaur and real brother of Bukan Singh. They have been sentenced to

undergo imprisonment for life and to pay a fine of Rs 1000/- each and in default of payment of fine to further undergo RI for two months.

The date of occurrence as projected by the prosecution is of the night intervening 7/8 February 1996. The First Information Report was registered in Police Station Ding on the statement of Jiwan Singh son of Gurcharan Singh, Jat Sikh, resident of Bhavdin District Sirsa Ex. PF on 8.2.1996 recorded by SI/SHO Shiv Dan Singh PW13 of Police Station Ding. It is alleged that on 6.2.1996 at about 6.00 PM when he reached his house, he found Sukhdev Singh son of Inder Singh resident of Sherkhanwala (since deceased) sitting in his house along with his wife Gurnam Kaur and Bukan Singh the two accused and Gurnam Kaur's son aged about eight years. He knew Sukhdev Singh earlier. Sukhdev Singh requested him to give them land to grow vegetables to which he declined saying that he did not have any land to give them. However, on request of Sukhdev Singh, he allowed them to stay for two days. Sukhdev Singh and the present two accused stayed in a room at his tubewell, where Maan Singh PW7 and Dharam Pal the other two farm labourers (Siris) were also staying there. Thereafter Jiwan Singh had left for Sirsa. It is then alleged that on 7.2.1996 at about 5.30 PM, aforesaid Maan Singh and Dharam Pal after leaving Sukhdev Singh and the present accused at the tubewell room (kotha) returned to their respective house. On 8.2.1996 at about 7.00 AM when Maan Singh reached the tubewell he noticed that tubewell room

(kotha) was lying open and none of the aforesaid persons were present there. He saw one person lying dead in the adjoining khal towards the west of the Kotha and blood was oozing out of the mouth, head and chest. Maan Singh narrated this incident to Jiwan Singh at his house who along with Maan Singh reached the spot and saw that Sukhdev Singh was lying dead. Dharam Pal also reached there. After leaving Maan Singh and Dharam Pal he started searching the present accused and the child but could not get any clue. He also informed the villagers and thereafter lodged the report with the concerned police.

The investigation of the case was handled by SI/SHO Shiv Dan Singh PW13 of Police Station Ding. After reaching tubewell of Jiwan Singh, he prepared the inquest report. Photographer was also called at the place of occurrence who clicked the photographs of the dead body and surroundings. The statements of certain witnesses were also recorded at the spot. The Jarsi (Ex. P4), one fellow of shoe (Ex. P17) lying near the dead body were also taken into possession vide different parcels. Rough site plan was also prepared at the spot. Post-mortem examination of the dead body was got conducted on the same day in the General Hospital, Sirsa.

On 10.2.1996 both the accused were produced by Jasbir Singh Member Panchayat resident of village Bhavdin (PW10) and Malik Singh before the Investigating Officer as both of them had made extra judicial confession before them confessing that they had murdered Sukhdev Singh

at the tubewell of Jiwan Singh as both were having illicit relations and Sukhdev Singh was an hurdle in their affairs. They also disclosed the manner of murdering Sukhdev Singh stating that Gurnam Kaur had caught hold of him whereas Bukan Singh had given kulhari blow to him. After Bukan Singh was formally arrested, he suffered a disclosure statement about the concealment of a kulhari under a tree at Jiwan Singh's tubewell, and got the same recovered. It was taken into possession. All the recovered articles were then sent to the Forensic Science Laboratory, Haryana, Madhuban. Vide reports Ex. PC and Ex. PC/1, human blood was found on shirt, trouser (pyjama), jacket and jarsi of Sukhdev Singh (since deceased), traces of blood were detected on shoes. Blood was also noticed on kulhari and some part of Jarsi. However, material was found to be disintegrated qua origin of the blood.

After the completion of the investigation, both the accused were challaned and charged under sections 302 read with section 34 IPC.

The prosecution in order to substantiate the charge against both the accused have examined the following witnesses:-

PW1 Dr. Joginder Singh :

This witness on 8.2.1996 had conducted the autopsy on the dead body of Sukhdev Singh and found the following injuries:-

" 1. A lacerated wound of size 2 cms x 1 cms on right parietal area, 4 cms above the right ear.

2. A lacerated wound of size 2.5 x 2 cms x bone deep over right cheek, 3 cms below the angle of right orbit underlying bone was fractured.
3. Lacerated wound of size 1 cm x 0.5 cm over lateral margin of left eye brow. Underlying bone was fractured.
4. An abraded contusion of size 25 cms x 20 cms on front of upper part of chest, more on left side. Colour was reddish.
5. An abraded contusion of size 26 cms x 15 cms over middle of back in lumber area involving both sides of mid-line. "

On dissection a fracture of middle part of sternum with fracture of ribs 3rd, 4th, 5th and 6th on left side and 5th, 6th and 7th on right side was noticed. The blood was present in the thoracic cavity. Underlying plura and lungs on both sides were lacerated badly. On anterior surface heart was also lacerated. According to the opinion of the doctor of autopsy, the death was due to haemorrhage and shock due to injury to vital organs, which was ante-mortem in nature and sufficient to cause death in ordinary course of nature. In his opinion the time elapsed between injuries and death was within a few minutes to few hours and between death and post-mortem was within 24 hours.

PW2 Maghar Singh :

He is real brother of the deceased and did not support the case of the prosecution. Consequently, he was declared as a hostile. As per the case of the prosecution, he was witness of motive as in his initial statement Ex. PD from which he was confronted, the case set up by the prosecution was that both the accused had liking for each other which was not liked by Sukhdev Singh.

PW3 Jagdev Singh :

He is also real brother of the deceased who too did not support the case of the prosecution and was declared hostile.

PW4 ASI Dhani Ram :

He had recorded the formal FIR Ex. PF/1 in Police Station Ding after receipt of ruqa Ex. PF.

PW5 Constable Ram Chander :

This official witness had delivered the special report to JMIC, Sirsa, SP Sirsa and DSP Sirsa on 8.2.1996.

PW6 Sukdev Singh son of Puran Singh :

This witness had also not supported the case of the prosecution and was declared as a hostile. As per the prosecution case he was a witness to the recovery of Kulhari from Bukan Singh accused.

PW7 Maan Singh :

This witness was working as a Siri along with Dharam Pal with Jiwan Singh. He had corroborated the prosecution case as already narrated

by Jiwan Singh in his initial statement Ex. PF.

PW8 Vijay Kumar Photographer :

He had clicked photographs Ex. P7 to Ex. P11 of the deceased and the surroundings area. He had also proved the negatives as Ex. P12 to Ex. P16.

PW9 Head Constable Rajinder Singh :

He had tendered his affidavit Ex. PK.

PW10 Jasbir Singh :

He was a witness of extra judicial confession. As per his substantive statement, the present two accused had approached him at his house on 10.2.1996 at 9.30 AM where Malik Singh PW11 was also present. Both the accused had confessed their guilt stating that they had committed the murder of Sukhdev Singh. The manner of murdering was also disclosed to them. In his cross-examination this witness was declared as a hostile on a particular aspect and learned Public Prosecutor was allowed to cross-examine him qua that.

PW11 Malik Singh son of Gurcharan Singh :

This witness was also of extra judicial confession and had corroborated the statement of Jasbir Singh PW10, the other witness of the same nature.

PW12 Jiwan Singh :

He was the first informant at whose kohta the present two

accused had stayed for about two days. Whatever was stated by him in his initial statement Ex. PF which was the basis of the recording of FIR was reiterated by him in his substantive statement before the trial court.

PW13 SI Shiv Dan Singh :

He was the Investigating Officer of this case. The entire investigation conducted by him has been alluded to by us in the preceding paras.

PW 14 Arjan Dass :

He had prepared the scaled site plan Ex. PQ of the place of occurrence.

PW15 Constable Ram Chander :

As per his statement, on 8.2.1996 he had delivered special report to the Ilaqa Magistrate.

The prosecution had also tendered FSL report Ex. PC and PC/1 and affidavits Ex. PG and Ex. PH of other two police officials and gave up Dharam Pal PW as un-necessary.

The stand taken by both the accused as emerges from their statement recorded under section 313 of the Code of Criminal Procedure was that they had visited the house of Jiwan Singh along with their small child on 6.2.1996. Both the accused also admitted that they had stayed at the tubewell of Jiwan Singh on the night intervening 7/8.2.1996. They also admitted that dead body of Sukhdev Singh was found lying but denied

having approached Jasbir Singh or Malik Singh on 10.2.1996 and denied having made any extra judicial confession before them. The plea taken by them is of false implication. However, no defence was led by any of the accused.

After appreciating the entire case, the learned trial court has convicted both the accused for the charge of section 302 read with section 34 IPC and sentenced them as stated above in the opening para. Hence, this appeal.

We have heard Mr. T.S.Sangha, learned counsel for both the accused and Mr. Dinesh Arora, learned Assistant Advocate General, Haryana. With their assistance, we have also gone through the entire evidence minutely.

Mr. Sangha at the very out set contends that although both the accused have admitted their presence in village Bhavdin at the tubewell room of Jiwan Singh upto the stage of death of Sukhdev Singh, yet the prosecution has not been able to prove the charge of murder against them beyond any shadow of reasonable doubt. According to him, the conviction cannot be recorded only on the basis of the last seen evidence especially when the prosecution case is on slippery footing with regard to other planks. Developing his case Mr. Sangha then contends that, one fact is established on the record that the accused and the deceased did not know anybody except Jiwan Singh, the first informant who had also stated in his initial

statement Ex. PF that he knew Sukhdev Singh earlier. Therefore, it is clear that none of the accused knew Jasbir Singh PW10 before whom they had allegedly made extra judicial confession. The case of the prosecution as set up is that upto 10.2.1996, both were not available and the police was searching to arrest them. In this eventuality there was no need for them to come back to village Bhavdin and suffer an extra judicial confession before Jasbir Singh who may be a Member Panchayat, but a stranger to them. If at all they had to approach anybody, he could be Jiwan Singh complainant alone who was at least known to them and not Jasbir Singh or Malik Singh. Mr. Sangha then contends that statement of Malik Singh PW11 otherwise deserves to be discarded as he is real brother of Jiwan Singh. This shows that the prosecution agency has imported these witness of their choice from village Bhavdin and that too of the choice of Jiwan Singh PW so that the prosecution case does not collapse whereas the evidence of these witnesses is of no value for the purpose of maintaining conviction of both the accused. Mr. Sangha then submits that even otherwise Jasbir Singh PW10 has been partly declared as a hostile during the trial and it is not safe to rely upon him.

Mr. Sangha then submits that prosecution has not brought forth any evidence of motive as both the real brothers of deceased have not supported the case of the prosecution. According to him, Jiwan Singh in his examination-in-chief had made an attempt to put forward the motive

stating that from the relatives of Bukan Singh accused and Sukhdev Singh deceased, he had come to know that Gurnam Kaur accused was earlier living as wife of Sukhdev Singh deceased and thereafter developed relationship with Bukan Singh accused. This statement cannot be read into evidence being hear-say statement. According to the learned counsel when Jasbir Singh PW10 before whom both the accused had allegedly suffered extra judicial confession when stepped into witness box did not say a word about the extra marital relations between the present two accused. Malik Singh PW11, however, had stated about this fact but he in any case he had to toe the line of his real brother of Jiwan Singh.

Demolishing the case of the prosecution in respect of recovery of Kulhari, pursuant to the disclosure statement of Bukan Singh, Mr. Sangha submits that the prosecution was mainly relying upon one Sukhdev Singh, an independent witness to the recovery but he did not support its case and was declared as a hostile. In this eventuality, the prosecution is left with the statement of Investigating Officer alone from whom crude padding of planting of the weapon is expected. Even otherwise there is no injury caused by sharp edged weapon on the person of the deceased and this also goes to show that Kulhari was not used in the crime.

On the basis of the aforesaid submissions, Mr. Sangha contends that the prosecution has not been able to complete the chain of circumstantial evidence pointing towards the guilt of the accused only and,

therefore, the benefit of doubt be extended to the accused. He, thus, prays for their acquittal.

Repudiating the averments advanced by Mr. Sangha, Mr. Arora submits that may be Maghar Singh and Jagdev Singh, the two witnesses of motive have not supported the case of the prosecution being real brothers of Bukan Singh accused, still the prosecution has been successful in proving the charge against both the accused. He submits that the main plank of the evidence i.e. the last seen evidence is admitted by both the accused in their statement recorded under section 313 of the Code of Criminal Procedure and therefore they have no escape. He then submits that may be some infirmities have crept in the statement of PW10 before whom both the accused had allegedly suffered extra judicial confession, but the same may be ignored for the reason that this witness had no enmity against the accused, who are in the nearest relations of the deceased; one being wife and the other being the real brother. They had the motive in their bosom to commit murder of Sukhdev Singh. Similarly Jiwan Singh PW10 who had given shelter to all the three, again, had no motive to falsely implicate them. He has projected true picture before the court and there is no reason to disbelieve him on any aspect. Learned State counsel then contends that the recovery of kulhari cannot be said to be a padding by the Investigating Officer. Even otherwise nothing much hinges upon it as all the main planks of circumstantial evidence are pointer towards the guilt of the

accused and as such they have no escape.

It is well settled that to hold a conviction on circumstantial evidence, the prosecution must establish all the planks of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances should not leave any room for doubt for any other hypothesis. It is also well settled that suspicion, however, grave may be, cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty.

After rescanning the case in hand on the aforesaid well settled yard-stick of appreciation of evidence, we are of the considered view that the prosecution has been able to prove the charge against both the accused beyond any shadow of doubt from the flow of following facts which speak for themselves:-

A very strong and the most clinching circumstance in this case is last seen theory which is admitted by both the accused. The case set up by the prosecution is that the deceased and the present accused had approached Jiwan Singh (PW12) for some work and ultimately they were given shelter for 2/3 days to stay at tubewell kotha. Both the accused admitted that they were there till dead body of Sukhdev Singh was found lying at a particular place (Khal). They have not projected any plea of false implication on account of any enmity. Even otherwise as per the case of the

prosecution there was no enmity between Jiwan Singh and the deceased. He knew him as he was hailing from a village where his brother-in-law (wife's brother) was married. Jiwan Singh has put forth a very true and pure account of the occurrence. We do not find any tinge of adulteration in it. He stated that his other Siri (labourer) Maan Singh had told him that a dead body was found lying near the khal. Consequently he went at the spot and after noticing Sukhdev Singh lying dead he searched for his brother and wife for some time and ultimately reported the matter. Possibly there could not be any suspicion on any body else except the present two accused who being wife and real brother of the deceased were staying in the kotha along with the deceased. The prosecution agency had to carry out the investigation in that direction only and the same was done. The time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so short that possibility of any person other than the accused being the author of the crime becomes impossible in the given facts of the case. The deceased and the present two accused were seen alive in the kotha one day prior to the occurrence and on the next date he was found dead. According to the post mortem report, the time elapsed between the death and the injuries was within a few minutes to a few hours. The injuries indicate that some altercation might have ensued between the two accused and the deceased and ultimately he was murdered.

Another material fact which goes against the accused is their conduct. They did not inform any body of the homicidal death of Sukhdev Singh who admittedly was staying with them in Kotha at the tubewell. Their keeping silence and rather leaving the place of occurrence speaks volumes of their involvement in the commission of the alleged offence.

We are conscious that even last seen evidence should also get corroboration from other set of convincing evidence for the purpose of completing the chain of events. In the present case, the prosecution is getting support from the statement of Jasbir Singh and Malik Singh, the most dis-interested persons. We do agree with the submission of Mr. Sangha that Jasbir Singh is silent about the motive part and on the other hand two witnesses of motive namely Maghar Singh and Jagdev Singh have not supported the case of the prosecution. But from the statement of Malik Singh PW11, the other witness of extra judicial confession, it has come on record that when both the accused had approached Jasbir Singh and him (Malik Singh), they had confessed that both were having extra marital relations and Sukhdev Singh was a hurdle for them. Therefore, in our view, even if the aforesaid two witnesses have not supported the case of the prosecution, the motive with both the accused viz to commit murder of Sukhdev Singh is established on record. An attempt has been made by Mr. Sangha to discard the statement of aforesaid Jiwan Singh and Malik Singh on the ground that both were interested witnesses being co-villagers

of Jiwan Singh but we find no force in his submission for the reason that they had no axe to grind against the present two accused who had approached them on their own and made voluntary extra judicial confession which can be solely relied upon by the court. No doubt, the present two accused are from different villages and were not available for about two days after the occurrence, this fact by itself does not create any doubt on their evidence. In our view they rightly reposed confidence in Jasbir Singh Member Panchayat and blurted out the entire episode before him confessing their guilt. They might have thought that he was an influential person of village Bhavdin where they had murdered Sukhdev Singh and ultimately they were to be arrested as police was after them. Therefore, instead of reposing confidence in any person of their village, they approached him for help. We do not find it to be un-usual for which the testimony of aforesaid Jasbir Singh (PW10) is to be discarded. Malik Singh who happens to be the real brother of Jasbir Singh was incidently sitting in the baithak of Jasbir Singh and therefore, he too has become the witness of extra judicial confession. Both these witnesses have stated that both the accused had approached them and turn by turn confessed their guilt with regard to killing Sukhdev Singh. Both the witnesses are also consistent on all material aspects. We are very much aware of the fact that Jasbir Singh PW10 has been partly declared as a hostile witness by Public Prosecutor when in cross-examination he was confronted with his previous statement

Ex. DA recorded under section 161 Cr.P.C. where the names of both the accused were mentioned but he had denied having made any such statement of disclosing names to the police. A request was made by Public Prosecutor for declaring him as hostile on this aspect. However, in his further cross-examination by the Public Prosecutor, he made it clear that he had heard their names but forgot soon thereafter and had disclosed their names to the Inspector (Thanedhar) when his statement was recorded but subsequently he forgot their names. However, the fact remains that this witness had identified both the accused in the court who had approached him. We hardly attach any importance to this fact taking it to be not that material as the identity of the accused is not doubtful before us. The admitted position is that Jasbir Singh was not known to the present two accused before the occurrence and therefore, even if he had forgotten their names, it would not make his statement un-worthy of credence when he has categorically stated that both had confessed their guilt before him. It is worth mentioning here that the identity of both the accused was made clear by Malik Singh PW11 who was also present in the baithak of Jasbir Singh and therefore, we do not find any good reason for disbelieving Jasbir Singh and Malik Singh PWs and accordingly, rely upon their evidence.

Much has been said by Mr. Sangha to demolish the recovery of kulhari pursuant to the disclosure statement of Bukan Singh accused submitting that Sukhdev Singh an independent witness to the said recovery

has not supported the case of the prosecution. The other contention is that there was no sharp edged injuries on the person of the deceased and as such the recovery turns out to be farce. We have seen injuries on the person of the deceased which are lacerated wounds resulting into fracture of many ribs. The lacerated wounds can be caused by the reverse side of the kulhari. Dr. Joginder Singh PW1 when stepped into witness box has also stated that the injuries could be caused by kulhari by using it from its reverse side. The FSL report of kulhari was shown to this witness. Blood was also detected on the kulhari as it is proved from the FSL report although the origin of the blood could not be ascertained as the material was dis-integrated. Assuming for the sake of argument, even if exclude the recovery of kulhari at the instance of Bukan Singh accused out of the zone of consideration, still we have clinching evidence on record as discussed herein-above and in our considered view, the same is sufficient to conclude that both the accused had committed the murder of Sukhdev Singh.

No other point has been left by us un-touched.

After having re-appreciated the entire circumstantial evidence in its right perspective, we hereby conclude that the prosecution has been able to establish all the planks of incriminating circumstances by reliable and clinching evidence and the circumstances proved on record complete the chain of events, permitting no conclusion other than the one of the guilt of both the accused. The established facts, thus, in our view, are consistent

only with the hypothesis of the guilt of the accused being conclusive in their nature.

Resultantly, while upholding the conviction and sentence of both the accused, we hereby dismiss both the appeals (Criminal Appeal No. 578-DB of 1997), filed by Gurnam Kaur and (Criminal Appeal No. 684-DB of 1997), filed by Bukan Singh alias Jaswant Singh.

Record reveals that both the accused are on bail as their substantive sentence was suspended on account of the guidelines laid down by a Division Bench judgment of this Court rendered in **Dharam Pal vs. State of Haryana**, 1999 (4) RCR (Criminal) 600. They shall be immediately taken into custody for serving remainder of their substantive sentence. Concerned quarters be informed in this regard without any delay.

(Virender Singh)
Judge

(A.N. Jindal)
Judge

12.12. 2006
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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of decision : December 12, 2006

Criminal Appeal No. 684-DB of 1997

Bukan Singh alias Jaswant Singh versus State of Haryana.

Coram: Hon'ble Mr. Justice Virender Singh
Hon'ble Mr. Justice A.N. Jindal

Present : Mr. T.S.Sangha, Advocate for the appellants.
Mr. Dinesh Arora, Assistant Advocate General, Haryana.

Virender Singh, J.

For detailed judgment, see Criminal Appeal No. 578-DB of 1997, Gurnam Kaur versus State of Haryana

(Virender Singh)
Judge

(A.N. Jindal)
Judge

12.12. 2006
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